

**FILED**

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

**AUG 28 2023**

<b>UNITED STATES DISTRICT COURT</b>	District: <b>Southern</b>
Name (under which you were convicted):  <b>Christopher Cox</b>	Docket or Case No.:  <b>2:23-cv-00577</b>
Place of Confinement: <b>Mount Olive Correctional Complex One Mountainside Way Mount Olive, WV 25185</b>	Prisoner No.: <b>3380755</b>

RORY L. PERRY II, CLERK  
U.S. District Court  
Southern District of West Virginia

Petitioner (include the name under which convicted)	Respondent (authorized person having custody of Petitioner)
<b>Christopher Cox</b>	<b>Donald F. Ames, Superintendent</b>
v.	
The Attorney General of the State of: West Virginia: <b>Patrick Morrissey</b>	

**PETITION**

- (a) Name and location of court that entered the judgement of your conviction you are challenging: Fayette County Circuit Court 100 North Court Street Fayetteville, WV 25840  
(b) Criminal docket or case number (if you know): 12-F-77
- (a) Date of the judgment of conviction (if you know): May 1, 2013  
(b) Date of sentencing: June 26, 2013
- Length of sentence: Fifteen Years to Life in Prison without Mercy
- In this case, were you convicted on more than one count or of more than one crime?  
Yes ☐ No ☒
- Identify all crimes of which you were convicted and sentenced in this case: One Count First Degree Murder
- (a) What was your plea? (Check One)  
☒ (1) Not Guilty ☐ (2) Nolo Contendere (no contest)  
☐ (3) Guilty ☐ (4) Insanity plea  
(b) If you entered a guilty plea to one count or charge and a not guilty to plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge Only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following :

(a) Name of Court: West Virginia Supreme Court of Appeals

(b) Docket or case number (if you know): 13-0778

(c) Result: Affirmed

(d) Date of Result (if you know): October 2, 2014

(e) Citation to the case (if you know): State of West Virginia v. Christopher Cox 2014 W. Va. LEXIS 995

(f) Grounds raised: (1) The trial court denied a fair trial when the Court required the Defendant's witnesses to testify by way of Video Conference in handcuffs and shackles with an armed prison guard behind them in full view of the jury.

(g) Did you seek further review by a higher state court?

Yes ☐ No ☒

If yes, answer the following:

(1) Name of Court: N/A

(2) Docket or Case Number (if you know): N/A

(3) Result: N/A

(4) Date of Result (if you know): N/A

(5) Citation to the case (if you know): N/A

(6) Grounds raised: N/A

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to 10 was "Yes," give the following information:

(a) (1) Name of Court: Fayette County Circuit Court

(2) Docket or case number (if you know): 18-C-161

(3) Date of filing (if you know): September 6, 2018

(4) Nature of the proceeding: Petition For Writ of Habeas Corpus

(5) Grounds raised: (1) Ineffective Assistance Of Counsel; (2) Petitioner's

Constitutional Right To Be Free From Restraint Was Violated When The Court

Forced Him To Wear A Stun-Belt

(6) Did you receive a hearing where evidence was given on your petition, application or motion?

Yes ☒ No ☐

(7) Result: Denied

(8) Date of result (if you know): February 24, 2021

- (b) If you filed any second petition, application or motion, give the same information:

(1) Name of Court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application or motion?

Yes ☐ No ☐

(7) Result: N/A

(8) Date of result (if you know): N/A

- (c) If you filed any third petition, application or motion, give the same information:

(1) Name of Court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application or motion?

Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First Petition: Yes ☒ No ☐

(2) Second Petition: Yes ☐ No ☐

(3) Third Petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

**GROUND ONE:** Petitioner's Due Process Rights Under The Sixth Amendment To The United States Constitution Were Violated When The Trial Court Forced Petitioner's Witnesses To Testify In Prison Garb While In Handcuffs And Shackles.

**(a) Supporting Facts** (Do not argue or cite law. Just state the specific facts that support your claim) :

Petitioner's right to a fair trial was violated when the trial court forced five defense witnesses to testify by video, in prison orange with handcuffs and shackles on, in plain view of the jurors.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

**(c) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?:

Yes ☒ No ☐

(2) If you did **not** raise the issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes" state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If you answer to Question (d)(4) is "Yes" did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes" state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No" explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

**GROUND TWO: Petitioner's Due Process Rights Under The Sixth Amendment To The United States Constitution Were Violated When The Trial Court Forced Petitioner To Wear A Stun-Belt Despite The Fact That Petitioner Had No Outbursts Or Disruptive Behavior In The Court And The Stun-Belt Was Visible To The Jurors**

**(a) Supporting Facts** (Do not argue or cite law. Just state the specific facts that support your claim) :

Petitioner's right to be from restraint was violated during trial for no reason. Petitioner was required by the Court to wear a bulging stun-belt during the entirety of his trial which was visible

to the jurors. Petitioner proffers that he had no outburst nor did he exhibit any disruptive behaviors to justify the Court forcing him to wear the stun-belt. Because the stun-belt was bulky and obvious, the jurors knew he was wearing one which prejudiced his chance at receiving mercy.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?:

Yes ☐ No ☒

(2) If you did **not** raise the issue in your direct appeal, explain why:

Ineffective assistance of appellate counsel

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes" state:

Type of motion or petition: Petition for Writ of Habeas Corpus

Name and location of the court where the motion or petition was filed: Fayette County

Circuit Court 100 North Court Street Fayetteville, WV 25840

Docket or case number (if you know): 18-C-161

Date of the court's decision: February 23, 2021

Result (attach a copy of the court's opinion or order, if available): Habeas Corpus Petition Denied

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If you answer to Question (d)(4) is "Yes" did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes" state:

Name and location of the court where the appeal was filed: West Virginia Supreme Court of Appeals State Capitol 1900 Kanawha Blvd. East Charleston, WV 25305

Docket or case number (if you know): 21-0251

Date of the court's decision: August 31, 2022

Result (attach a copy of the court's opinion or order, if available): Order Denying Writ of Habeas Corpus Affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No" explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?

Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: No

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?

Yes ☐ No ☒

If "Yes" state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?

Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised: N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing : Jason D. Parmer 1207 Quarrier St. Ste 400 Charleston, WV 25301

(b) At arraignment and plea : Same As Above

(c) At trial : Same As Above

(d) At sentencing : Same As Above



(e) On appeal: Same As Above

(f) In any post-conviction proceeding : Joseph A. Curia 107 Hale St. Ste 208 Charleston, WV 25301

(g) On appeal from any ruling against you in a post-conviction proceeding : Joseph A. Curia 107 Hale St. Ste 208 Charleston, WV 25301

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?

Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?

Yes ☐ No ☒

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition:

**The instant "PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY" is not timely due to circumstances beyond Petitioner's control which will demonstrate the granting of equitable tolling.**

**The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")** as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitations shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of :
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.



- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, Petitioner asks that the Court grant the following relief: That the Petitioner's conviction be **Vacated**, the sentence imposed **Voided**, the case be remanded back to the Circuit Court of Fayette County, West Virginia with instruction that he be given a new trial. Further, the Petitioner requests that in the event of an adverse ruling by this Court, that a Certificate of Appealability (COA) be granted or any other relief petitioner may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on this 23 Day of August, 2023.

Executed (signed) on August 23, 2023.

  
\_\_\_\_\_  
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. N/A